



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,352	07/10/2006	Florence Viaud	0512-1330	5722
466	7590	10/05/2011	EXAMINER	
YOUNG & THOMPSON			BADR, HAMID R	
209 Madison Street				
Suite 500			ART UNIT	
Alexandria, VA 22314			PAPER NUMBER	
			1781	
			NOTIFICATION DATE	
			DELIVERY MODE	
			10/05/2011	
			ELECTRONIC	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DocketingDept@young-thompson.com

Office Action Summary	Application No. 10/574,352	Applicant(s) VIAUD, FLORENCE	
	Examiner HAMID R. BADR	Art Unit 1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on RCE, 8/02/2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-24 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 1-24 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/02/2011 has been entered.

Claims 1-24 are being considered on the merits.

The Declaration by Ms. Florence Viaud dated 7/5/2011 has been considered.

New ground(s) of rejection are set forth below.

Claim Objections

Claims 1-24 are objected to for not starting with 'A', for independent claims, or 'The', for dependent claims. Correction is required.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 1781

2. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kempter et al. (US 2002/0187237; hereinafter R1) in view of Kharrazi (US 4,719,113; of record; hereinafter R2).

3. R1 discloses a method of making processed mozzarella type cheese by preparing a blend of young cheese, and cooking the blend to create a fibrous structure (Abstract)

4. R1 discloses that the cooking temperature is not particularly limited but preferably it is between 65 C and 85C. Typical cooking times are in the range of from 5 minutes to 25 minutes. [0023]

5. R1 teaches of packaging the processed cheese by subjecting it to chill-roll technology or hot filling. [0032]

6. R1 presents the manufacturing process for a pasta filata type cheese [0039]. Mozzarella or Cagliata type cheeses are claimed (claim 7)

7. R1 is clearly disclosing the process parameters for producing a pasta filata type cheese having a fibrous texture with specific emphasis on the process temperature and processing time. While lactic cultures such as *Lactobacillus bulgaricus* and *Streptococcus thermophilus* (yogurt cultures) are used in the process of producing mozzarella, however, the product disclosed by R1 is processed at a temperature which may affect the viability of such cultures. Being beneficial probiotics, it would be desirable to restore their presence in the heat processed fibrous product.

8. R2 discloses a yogurt food product having the consistency of cheese. (Abstract).

Art Unit: 1781

9. R2 discloses a process where the base ingredients are mixed and heated to about 82C. The base is then cooled to about 37C and yogurt is mixed with the cooled base. (Col. 2 line 50 to col. 3, line 19).

10. R2 teaches of mixing three-fourths to one pound of yogurt with every pound of the viscous mixture (Col. 3, lines 16-18) and to obtain the desired texture, some of the moisture is removed from the mixture later on (col. 3, lines 56-59). Therefore, it would be obvious to optimize the required quantity of yogurt to obtain a desirable texture of the product. The required quantity of the fermented milk, in claim 1, would then be the optimized level of this ingredient.

11. R2 discloses that for mozzarella-yogurt, resembling mozzarella cheese, the mozzarella flavor is used in the formulation (col. 3, lines 52-59). Since R2 clearly discloses the addition of mozzarella flavor to create mozzarella-yogurt product, the incorporation of real mozzarella cheese (for the sake of flavor) would be motivated and thus obvious.

12. Given that the yogurt is added to the cooled base mixture, as disclosed by R2, the process will have certain advantages namely; protection of the live culture in the added yogurt, prevention of curdling of yogurt at high temperature and low pH, and protection of the flavor imparted by yogurt to the finished product.

13. It is noted that since the yogurt culture (lactic acid bacteria) is not heat tolerant, a known fact in the art, it is obvious to cool the mass of cheese before mixing it with yogurt containing live culture, as presently claimed, at least to a temperature to be tolerated by yogurt bacteria.

Art Unit: 1781

14. It is also noted that claim 23 characterizes the cheese product in terms of resilience and cohesion. Since the products described by both R1 and R2 resemble mozzarella cheese, the resilience and cohesion, as presently claimed, would be intrinsic in the cheese products disclosed. In other words, the resilience and cohesion as presently claimed would be characteristic of obvious products in light of R1 and R2.

15. R1 discloses the process and the product where natural cheese may be processed to create fibrous texture and R2 teaches of mixing the yogurt with a base which is cooled before mixing the yogurt in order to make a product resembling mozzarella cheese. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to follow the teachings of R1 and mix in the yogurt at a lower temperature as taught by R2. One would do so to protect the live culture in the yogurt, to protect the flavor and prevent the curdling of the added yogurt at low pH and high temperature. Absent any evidence to contrary and based on the combined teachings of the cited references, there would be a reasonable expectation of success in making a fibrous cheese containing yogurt.

Response to Arguments

In light of the new grounds of rejection, Applicants' arguments are moot.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAMID R. BADR whose telephone number is (571)270-3455. The examiner can normally be reached on M-F, 8:00-5:00.

Art Unit: 1781

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HAMID R BADR/
Examiner, Art Unit 1781

HAMID R BADR
Examiner
Art Unit 1781